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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/880,975

06/13/2001

Thomas J. Sonderman

2000.045300

5882

23720

7590

12/05/2005

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EXAMINER

BLUM, DAVID S

ART UNIT

PAPER NUMBER

2813

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/880975

EXAMINER

ART UNIT

PAPER

11302005

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

This is in response to the appeal brief filed 9/13/05.

1) Removal of Admitted Prior Art From the Specification

The examiner had objected to an amendment to the specification as removal of an admission of prior art. It is the examiner's position, that the reference to equipment available to the public is an admission that the equipment is in the public domain and that the equipment and its manuals are therefore admitted prior art. Removal of such reference is therefore new matter.

The applicant argues that the removal of cited equipment is not new matter, only removal of examples.

This issue is not an appealable issue, but rather a petitionable matter. As the issue may have bearing on the question of patentability, but not the merits of the invention, this issue must be resolved prior to appeal. See 37 C.F.R. 41.31 (3) [c].

The objection to the amendment was raised in the office action of 10/25/04 and again in the office action of 6/8/05. In the office action of 6/8/05, the applicant was informed that failure to correct this issue of new matter will result in a holding of intentionally non-responsive. As such, the examiner repeats the warning of intentional non-responsiveness and failure to correct the new matter issue or file a petition regarding the matter will result in a finding on non-responsiveness, and the accompanied abandonment.

The appeal brief filed on 9/13/05 is not fully responsive to the prior Office Action because: The proper reply would be either a correction to the amended specification (replacing the deleted matter) or a petition. The appellant has argued that the deletion does not constitute a new matter, but currently has not responded in the proper format. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

2) Request for information under 37 C.F.R. 1.105

The examiner has requested information in the office action of 5/17/04 and again in the office action of 6/18/05. In the request, the

examiner had requested all information regarding the cited Rudolf and Tencor equipment, explicitly requesting any information on the data processing capabilities of the equipment available for commercial use. This would then include manual (part) 17944. The appellant has submitted two Tencor manuals, arguing in the appeal brief that this is all of the references, but failed to submit any information on data processing capabilities.

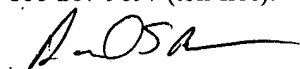
The appellant has failed to submit any manuals on the Rudolf equipment, arguing that there were none available.

However, this is not an appealable issue. The appellant must comply with the request for information, or reply according to 37 C.F.R. 1.105. As this is not an appealable matter, any submission or reply should be done outside of an appeal brief.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Blum whose telephone number is (571)-272-1687 and e-mail address is David.blum@USPTO.gov.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead Jr., can be reached at (571)-272-1702. Our facsimile number for all patent correspondence to be entered into an application is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David S. Blum
December 1, 2005